



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0700; FRL-9999-77-Region 5]

**Air Plan Approval; Indiana; Attainment Plan for the Morgan
County Sulfur Dioxide Nonattainment Area**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving as a State Implementation Plan (SIP) revision the Morgan County-related elements of an Indiana submission to EPA dated October 2, 2015, as supplemented on November 15, 2017, June 7, 2017, February 8, 2019, and February 12, 2019. EPA concludes that Indiana has appropriately demonstrated that the plan provisions provide for attainment of the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) in the Morgan County area by the applicable attainment date and that the plan meets the other applicable requirements under the Clean Air Act.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0700. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: John Summerhays at EPA Region 5, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067, summerhays.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of EPA's Notice of Proposed Rulemaking

Following the promulgation in 2010 of a 1-hour primary SO₂ NAAQS, EPA designated two townships in Morgan County, Indiana as nonattainment for this NAAQS, in conjunction with designating three other areas in Indiana and multiple areas in other states as nonattainment as well. On October 2, 2015, Indiana submitted plans addressing all four of its SO₂ nonattainment areas. EPA is taking separate action on Indiana's plans for its other nonattainment areas: EPA proposed action on plans for the other three areas (Indianapolis, Terre Haute and Southwest Indiana) on

August 15, 2018, at 83 FR 40487, and took final action on the plans for Indianapolis and Terre Haute on March 22, 2019, at 84 FR 10692. EPA continues separate review of the plan for Southwest Indiana.

In addition to its October 2, 2015 submittal, Indiana made four supplemental submittals, three of which are relevant specifically to Morgan County. While the October 2, 2015 submittal included rules that imposed work practice requirements on both the Indianapolis Power and Light-Eagle Valley power plant (IP&L-Eagle Valley) and Hydraulic Press Brick, Indiana rescinded the submittal of the requirements for Hydraulic Press Brick on June 7, 2017. However, Indiana then withdrew this rescission on February 12, 2019, reactivating its request for EPA to approve these requirements. On February 8, 2019, Indiana submitted additional analysis for Morgan County to demonstrate that use of a more conservative approach to estimating background concentrations in this area also resulted in the conclusion that the area is attaining the SO₂ NAAQS. In addition, on November 15, 2017, Indiana provided clarifications on its inventory procedures and other elements of its four nonattainment plans.

EPA published a notice of proposed rulemaking addressing Indiana's plan for the Morgan County SO₂ nonattainment area on July 9, 2019, at 84 FR 32672. EPA proposed to approve rules

that require IP&L-Eagle Valley to burn natural gas (rather than coal) in its primary boilers and that require Hydraulic Press Brick to conduct dry sorbent injection sufficient to achieve 50 percent emission reduction (except to the extent that this control is not necessary for SO₂ emissions to be below 2.5 pounds per million British Thermal Units). EPA proposed to conclude that Indiana has demonstrated that these requirements provide for the Morgan County area to attain the SO₂ NAAQS. Finally, EPA proposed to conclude that Indiana has satisfied the other applicable requirements for nonattainment areas, including requirements for a suitable emissions inventory, for reasonably available control measures/reasonably available control technology (RACT/RM), for reasonable further progress (RFP), and for contingency measures.

II. Comments

EPA received no comments on its notice of proposed rulemaking. EPA also has no other reason to reevaluate its proposed approval of Indiana's plan for the Morgan County SO₂ nonattainment area.

III. EPA's Final Action

EPA is approving Indiana's SIP submission for the Morgan County SO₂ nonattainment area, which the state submitted to EPA on October 2, 2015 and supplemented on June 7, 2017, November 15, 2017, February 8, 2019, and February 12, 2019. This SO₂ nonattainment plan included Indiana's attainment demonstration

for this area. The nonattainment plan also addressed requirements for emission inventories, RACT/RACM, RFP, and contingency measures. Indiana has previously addressed requirements regarding nonattainment area new source review (NSR). EPA has determined that Indiana's SO₂ nonattainment plan for Morgan County meets the applicable requirements of Clean Air Act sections 110, 172, 191, and 192.

The rules that underpin Indiana's attainment plan for Morgan County include three rules. Indiana Administrative Code, Title 326, Rule 7-4-11.1 (326 IAC 7-4-11.1, entitled "Morgan County sulfur dioxide emission limitations") imposes the work practice requirements described above. Indiana's SO₂ nonattainment plans also include two rules specifying compliance provisions, namely Rule 326 IAC 7-1.1-3 (entitled "Compliance date") and Rule 326 IAC 7-2-1 (entitled "Reporting requirements; methods to determine compliance"). However, EPA has already approved these two compliance rules, as part of final action to approve Indiana's plan for the Indianapolis and Terre Haute areas. Therefore, while EPA reaffirms the role of these two rules in the Morgan County plan, EPA need not reapprove and is not reapproving these rules as part of today's action. Instead, the codification for this rule only adds the approval of Morgan County limits in Rule 326 IAC 7-4-11.1.

In addition to codifying approval of these rules, EPA is also codifying its approval of Indiana's attainment plan for Morgan County. EPA's prior action to approve the attainment plans for the Indianapolis and Terre Haute areas (published March 22, 2019 at 84 FR 10692) did not codify approval of those plans; for administrative convenience, codification of those approvals is included with the codification of this action.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of an Indiana regulation described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the applicable person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rulemaking of EPA's approval, and will be

incorporated by reference in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

¹ 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Reporting and recordkeeping requirements, Sulfur oxides.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: September 4, 2019.

Cheryl L Newton,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.770 is amended:

a. In the table in paragraph (c), under "Article 7. Sulfur Dioxide Rules", "Rule 4. Emission Limitations and Requirements by County", by removing the entry for "7-4-11" and adding in its place an entry for "7-4-11.1"; and

b. In the table in paragraph (e) by:

i. Adding an entry for "Indianapolis 2010 Sulfur Dioxide (SO₂) Attainment Plan" after the entry for "Indianapolis Hydrocarbon Control Strategy";

ii. Adding an entry for "Morgan County 2010 Sulfur Dioxide (SO₂) Attainment Plan" before the entry for "Muncie 1997 8-hour ozone maintenance plan"; and

iii. Adding an entry for "Terre Haute 2010 Sulfur Dioxide (SO₂) Attainment Plan" before the entry for "Terre Haute 2010 Sulfur Dioxide (SO₂) maintenance plan".

The revision and additions read as follows:

§ 52.770 Identification of plan.

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(c) * * *

EPA--APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Article 7. Sulfur Dioxide Rules				
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Rule 4. Emission Limitations and Requirements by County				
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7-4-11.1	Morgan County sulfur dioxide emission limitations	7/5/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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EPA--APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
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Indianapolis 2010 Sulfur Dioxide (SO ₂) Attainment Plan	10/2/15	3/22/2019, 84 FR 10692	
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Morgan County 2010 Sulfur Dioxide (SO ₂) Attainment Plan	10/2/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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Terre Haute 2010 Sulfur Dioxide (SO ₂) Attainment Plan	10/2/15	3/22/2019, 84 FR 10692	
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[FR Doc. 2019-20130 Filed: 9/20/2019 8:45 am; Publication Date: 9/23/2019]